

## **VIRGINIA BOARD OF MEDICINE MINUTES**

February 21, 2008

Department of Health Professions

Richmond, VA

**CALL TO ORDER:** The meeting of the Board convened at 9:04 a.m.

**MEMBERS PRESENT:** Stephen Heretick, JD, President  
Sandra Anderson Bell, MD  
Patrick Clougherty, MD  
Malcolm Cothran, MD  
Claudette Dalton, MD  
William Epstein, MD  
Suzanne Everhart, DO  
Valerie Hoffman, DC  
Roderick Mathews, JD  
Juan Montero, MD  
Robert Mosby, MD, Vice-President  
Gopinath Jadhav, MD  
Jane Piness, MD, Secretary-Treasurer  
Karen Ransone, MD  
Ellen Shapiro, DPM

**MEMBERS ABSENT:** Gen. Clara Adams-Ender, RN, MSN, USA Retired  
Ann T. Burks, JD

**STAFF PRESENT:** William L. Harp, MD, Executive Director  
Jennifer Deschenes, JD, Deputy Executive Director, Discipline  
Barbara Matusiak, MD, Medical Review Coordinator  
Kate Nusbisch, MS, Deputy Executive Director,  
Practitioner Information  
Ola Powers, Deputy Executive Director, Licensing  
Colanthia Morton Opher, Recording Secretary  
Amy Marschean, Assistant Attorney General  
Sandra Ryals, Director, Department of Health Professions  
Emily Wingfield, Deputy Director, Department of Health Professions  
Elaine Yeatts, DHP Senior Policy Analyst

**OTHERS PRESENT:** Michael Jurgensen, Medical Society of Virginia  
David Falkenstein, Virginia Academy of Physician Assistants  
Zane Reasoner, Virginia Academy of Physician Assistants  
Sandy Elbaum, DC  
Peggy Franklin, CPM, Midwifery Advisory Board  
Leslie Payne, CPM, Midwifery Advisory Board  
Brynne Potter, CPM, Commonwealth Midwives Alliance  
Deren Bader, CPM, Dr.PH, Chair, Midwifery Advisory Board

Sara Krivanec, International Cesarean Awareness Network  
Kim Schaff  
Heidi McHugh IAME  
Bill Ferguson, Board of Barbers and Cosmetology  
Brad Robinson, DC, Virginia Society of Chiropractic  
Chris Werne, The Chrysler Institute, Advisory Board of  
Virginia State Association of Skin Care Professionals  
Maggie Kim, NOVA Laser Training  
Becky Bowers Lanier, Commonwealth Midwives Alliance  
Robert Bohannon, American Academy of Dermatology Association  
Tyler Cox, Medical Society of Virginia  
Kathy Sheraw, Leesburg Laser Center  
Paige Fitzgerald, Troutman Sanders  
Laura Todd, Virginia State Association of Skin Professionals  
Trinlie Wood, Commonwealth Midwives Alliance  
Lauren Amos, IAME  
Blair Williams, IAME  
Brenda Godwin

## **EMERGENCY EVAUCATION PROCEDURES**

After roll call and declaration of a quorum, Dr. Mosby read the emergency evacuation procedures.

## **APPROVAL OF THE OCTOBER 18, 2007**

Dr. Ransone moved to approve the minutes of October 18, 2007 as amended by Emily Wingfield. The motion was seconded and carried.

## **ADOPTION OF AGENDA**

Dr. Everhart moved to adopt the agenda as presented. The motion was seconded and carried.

## **INTRODUCTION OF VISITING GUESTS**

Mr. Heretick acknowledged the guests in the gallery and proceeded with public comment.

## **PUBLIC COMMENT ON AGENDA ITEMS**

### Fourth Visit Rule – Physician Assistants

Mike Jurgensen presented the Board with a letter from the Medical Society of Virginia (MSV) dated February 19, 2008, opposing the deletion of the fourth visit requirement. Mr. Jurgensen stated that in light of SB 693 which would enhance the physician assistants' scope of practice, the fourth visit rule is an even more essential component in the relationship between the physician and the assistant, and would ensure continuity and quality of care for the patient.

David Falkenstein, PA from the Virginia Academy of Physician Assistants advised they wished to withdraw their support for regulatory change.

Diana Houle, PA, Chair, Advisory Board on Physician Assistants, advised that she was in receipt of numerous letters from physicians and physician assistants supporting a regulatory change to remove the fourth visit rule. Ms. Houle stated that the current regulations place a burden on all parties involved. Ms. Houle reiterated that the Advisory Board on Physician Assistants maintains its support to proceed with the NOIRA.

### Midwifery

Becky Bowers Lanier, Legislative Counsel for the Commonwealth Midwives Alliance, voiced support for the recommendation from the Advisory Board on Midwifery. Ms. Lanier also distributed a letter formalizing their support.

Sarah Krivanic, co-founder of the International Cesarean Awareness Network also voiced her support of the recommendation of the Advisory Board on Midwifery.

### Laser Hair Removal

The Board heard comments from several student estheticians, spa owners and an attorney expressing concern about the proposed draft document on laser hair removal. Some speakers commented that declaring laser hair removal was more about economics than public safety. Others noted that the best approach is not more regulations but required training and certification. Letters were also read to the Board by several of the speakers echoing their disapproval of any changes to current laser practice. All of the speakers wished to impress upon the Board their opposition to the proposed guidance document.

Robert Bohannon – Asst. Director of State Affairs with the American Academy of Dermatology Association advised the Board that it has been following this issue nationwide and that it is their belief that the use of lasers for hair removal is the practice of medicine. Mr. Bohannon addressed the implication of territorial issues and clarified the term “physician oversight”, advising that it provides for someone properly educated and trained to do the procedure with the physician being available in the event of an emergency.

## **PRESIDENT’S REPORT**

Mr. Heretick commented on the work of Dr. Harp and Dr. Matusiak for their efforts to meet the Board’s and DHP’s goal of expeditious case resolution. Mr. Heretick requested that every board member dedicate one day in March to come in to the Board office and perform probable cause review.

Mr. Heretick informed the Board that he had attended Dr. Cothran’s retirement celebration. Mr. Heretick remarked that it was one of the nicest retirements he has attended and if the individuals that attended were any reflection of what Dr. Cothran brought to the Lexington community and medical profession, the Commonwealth is much the richer for his practice.

## **VICE-PRESIDENT'S REPORT**

There was no report.

## **SECRETARY-TREASURER REPORT**

There was no report.

## **EXECUTIVE DIRECTORS REPORT**

### Revenue and Expenditures

Dr. Harp advised that 35,800 licensees were renewing for this biennial period, and the Board is operating within budget.

### Acupuncture Advisory Board and Physical Therapy

Dr. Harp informed the Board of the meeting of the two boards regarding the process of dry needling. Dr. Harp reported that the meeting occurred because the Advisory Board on Acupuncture believed the dry needling procedure overlapped with the acupuncture scope of practice. The Advisory Board on Acupuncture developed language that was accepted and approved by the Board of Physical Therapy; the language will be on the consent form for patients seeking dry needling.

### Respiratory Care Request to the Board of Health Professions

Dr. Harp advised the Board that the Advisory Board on Respiratory Care Practitioners will submit a request to the Board of Health Professions to evaluate the activities of polysomnographers to determine if their duties and responsibilities fall under the scope of practice of respiratory care, and if so, short of legislation, consider a limited pathway to the profession.

### Petition for Rule-Making on USMLE Ten Year Regulation

Dr. Harp informed the Board that the 10-year USMLE rule that went into effect October 17, 2007 is being questioned. Dr. Harp stated that a petition for rule-making has been received by the Board and the normal procedures for rule-making will be followed.

### Board Retreat – April 4-5, 2008

Dr. Harp indicated that a Board workshop will be held in conjunction with the Executive Committee April 4-5 at the Richmond Board office.

### Board Members Terms Expiring

Dr. Harp identified those board members with terms expiring June 30, 2008.

Dr. Harp stated that those interested in continuing to serve should contact the Governor's/Secretary's Office and express their wish to do so.

Report from the Citizens Advocacy Center Annual Meeting

Dr. Harp highlighted several topics in General Adams-Ender's report on her attendance at the meeting in Seattle.

DEA Multiple Schedule II Prescriptions Ruling

Dr. Harp reported that the DEA has published a ruling on the dispensing of Schedule II drugs. Dr. Harp reminded the Board that in 2005 it became unlawful to write multiple scripts for the same drug for the same patient on the same day. However, the latest guidance from DEA allows a practitioner to write multiple scripts on the same day that provide a total of up to 90 days of drug.

FSMB's Responsible Opioid Prescribing Handbook

Dr. Harp advised that the Federation of State Medical Boards has gifted the Board of Medicine with 20,000 opioid prescribing manuals for distribution to our licensees. Dr. Harp noted that the value of this gift is approximately \$100,000.

Mixing, Diluting and Reconstituting Regulations

Dr. Harp reminded the Board of the effective date of the MDR regulations and advised that, due to the changes in UPS 797, the regulations will need to be reviewed for possible revision.

Dr. Harp advised that the Ad Hoc Committee may need to be reconstituted to address this issue.

**COMMITTEE AND ADVISORY BOARD REPORTS**

Dr. Bell moved to accept the Committee and Advisory Board reports en bloc. The motion was seconded and carried.

**OTHER REPORTS**

Assistant Attorney General

Ms. Marschean advised that the Virginia Supreme Court denied Dr. Abofreka's petition and that Dr. Vuyyuru's appeal for en bloc hearing review had been denied by the Court of Appeals.

Assistant Director of DHP – Emily Wingfield

On Ms. Ryals' behalf, Ms. Wingfield encouraged the Board members to read the memo regarding spending restrictions.

Board of Health Professions

Dr. Cothran asked Ms. Wingfield to expound on the redeployment of compliance personnel as reported in the minutes of the February 6, 2008 meeting.

Ms. Wingfield provided background information on the decision and assured the Board that appropriate staff was consulted in regards to the realignment of duties. Dr. Cothran wanted the record to show his opposition to compliance monitoring duties being shifted back to the Board of Medicine without any additional staff.

Department of Health Professions

There was no report.

Podiatry Report

There was no report.

Chiropractic Report

There was no report.

**NEW BUSINESS**

Report from the 2008 Session of the General Assembly

Ms. Yeatts provided the latest report and highlighted those bills pertaining to the Board of Medicine.

Regulatory items

Chart of Regulatory Actions

Ms. Yeatts provided a status report for informational purposes that did not require any action.

NOIRA for Supervision of Physician Assistants

Dr. Dalton moved to withdraw the NOIRA. The motion was seconded and carried.

Adoption of Fast-Track Action on Mixing, Diluting or Reconstituting Regulations (MDR)

Dr. Ransone moved to accept the recommendation of the Legislative Committee to amend the MDR regulations as they pertain to vaccines by a fast-track action. The motion was seconded and carried.

Consideration of an Exempt Action to Reduce the Reinstatement Fee for Doctors

Dr. Bell moved to reject the recommendation of the Legislative Committee, and to amend the regulations 18 VAC85-20-22(J) to strike the language “for each year in which the license has been lapsed, not to exceed a total of four years”. The motion was seconded. After discussion, the motion was carried.

NOIRA on Bachelor's Degree for Chiropractors

Dr. Hoffman moved to reject the recommendation for withdrawal of the NOIRA from the Legislative Committee and to proceed with the promulgation of proposed regulations. The motion was seconded. After discussion, the motion passed 8 to 7.

After further discussion, Dr. Hoffman moved that the regulations be amended to require that an applicant for licensure in chiropractic be required to provide evidence of a bachelor's degree. The motion was seconded and carried 12 to 3.

Letters Concerning Midwifery and Recommendation from the Advisory Board on Midwifery

Ms. Yeatts advised that the letters presented in the agenda packet were discussed at the Advisory Board on Midwifery at great length.

Deren Bader, CPM, Dr. PH and Chair of the Advisory Board on Midwifery addressed the Board and gave a brief history of her midwifery background. Dr. Bader, in response to the points in the letters, gave an informative presentation that highlighted CPM practice guidelines, risk screening, NARM's requirements for informed choice, and “drop offs”. In addition, Dr. Bader provided the Board with statistical data and discussed in detail trends in Cesarean deliveries and VBAC. Dr. Bader then fielded several questions from the Board members.

After further discussion, Dr. Montero moved to develop a NOIRA on the issue of licensed midwives' approach to high-risk pregnancies. The motion was seconded and carried.

Laser Hair Removal Guidance Document

Dr. Cothran moved to accept the draft revisions to the proposed guidance document with the noted change. The motion was seconded and carried.

Dr. Harp suggested that the Legislative Committee discuss development of legislation for the 2009 General Assembly to define an esthetic and medical track regarding the use of lasers at their May 16, 2008 meeting. In addition, Ms. Yeatts suggested that this be done as an Ad Hoc and in consultation with the appropriate boards at DPOR.

Sanctions Reference Points Update

Mr. Kauder gave an informational update on the Sanction Reference Points and CCA Study Results. He advised the Board that this was for informational purposes only and did not require any action at this time.

Director of DHP – Sandra Ryals

Ms. Ryals addressed the Board's inquiries regarding the spending restrictions memorandum and informed the Board that the restrictions have been tightened up even more.

Ms. Ryals impressed upon the Board that with the downward turn in the economy, even though we are a non-general fund agency, we are not exempt from the restrictions.

Ms. Ryals said that a new round of budget reductions is currently underway and all state agencies have been directed to develop reduction plans for .5% for the current fiscal year and 5% FY09 and also FY10.

In response to the concern surrounding the disbanding of the compliance unit, Ms Ryals advised that the realignment of compliance duties will be reviewed for efficiency and effectiveness in intervals of 3, 6, 9, and 12 months and addressed appropriately.

Three Paid Claims Competency Assessments

Ms. Nosbisch presented the Board with data on the three paid claims competency assessments to date. This information was presented for informational purposes only and did not require any action.

Practitioner Information Report and Statistics

Ms. Nosbisch provided a statistical report on the website activity, emergency contact information and the profile compliance. This information was provided for informational purposes only and did not require any action.

Discipline Report and Statistics

Ms. Deschenes gave a verbal update on the Board of Medicine's case status. Ms. Deschenes acknowledged board staff's efforts on blitzing and participating in old case review team meetings in order to manage the case load.

Ms. Deschenes reiterated the need for Board members to come to the office as often as possible to assist with the review of cases.

Appointment of Nominating Committee

Dr. Ransone, Dr. Everhart and Dr. Bell volunteered to comprise the Nominating Committee and develop a slate of officers for 2008-2009.

**ANNOUNCEMENTS**

There were no additional announcements.



Agency Subordinate Recommendations, Credentials Committee Recommendations and Consideration of Consent Orders

Upon a motion by Dr. Ransone, and duly seconded by Dr. Bell, the Board voted to convene a closed meeting pursuant to §2.2-3711.A(28) of the Code of Virginia, for the purpose of deliberation to reach decisions regarding the recommendations made by the Agency Subordinate in five cases and the Credentials Committee's Recommendation in one case.

Additionally, Dr. Ransone moved that Ms. Marschean, Dr. Harp, Ms. Deschenes and Colanthia Opher attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations.

Having served as the Agency Subordinate, Mr. Mathews recused himself from closed session.

The Board re-convened in open session and certified that the matters discussed in the preceding closed session met the requirements of §2.2-3712 of the Code.

The Board approved the recommendations made by the Agency Subordinate and accepted the recommendation of the Credentials Committee.

Final Orders of the Board will be issued to each of the licensees in all these cases.

Conflict of Interest Training

Due to time constraints, the Board agreed that this training would be at the retreat April 4-5, 2008.

**NEXT SCHEDULED MEETING:** June 26, 2008

**ADJOURNMENT:** With no further business to conduct, the meeting adjourned at 2:15 p.m.

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Stephen E. Heretick, J.D.  
President

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William L. Harp, M.D.  
Executive Director

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Colanthia Morton Opher  
Recording Secretary